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ABSTRACT

The unit explores the ethic of private property in American history, concentrating particularly on the means by which Americans have sought to reconcile the conflict between private rights and the public interest. Readings range from Thomas Jefferson and the natural rights theorists to Henry George and Eugene V. Debs, from Andrew Carnegie and William G. Sumner to Saul Alinsky. A case study details current dissension over open housing, focusing on the controversy over Proposition Fourteen in California. The unit is designed primarily for college-bound students and junior high students of above-average ability. (See SO 000 161 for a listing of related documents.) (Author/SBE)

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TEACHER'S MANUAL

PROPERTY IN AMERICA:
THE BALANCE OF PRIVATE RIGHTS AND PUBLIC INTEREST

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SO 000 167

This material has been produced
by the
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NOTE TO THE PUBLIC DOMAIN EDITION

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The units have been used experimentally in selected schools throughout the country, in a wide range of teaching/learning situations. The results of those experiments will be incorporated in the Final Report of the Project on Cooperative Research grant H-168, which will be distributed through ERIC.

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This unit was initially prepared in the summer of 1967

This unit asks the student to explore a major value-question of American society. The fundamental problem is to consider the nature of property rights in America and the dilemma posed by conflicting demands of public interest.

Throughout history, we have attempted to cope with this problem. On occasion, strong appeals are made for the preservation of man's "unalienable right to property." What is the nature of this right? Is this right absolute? How can justice and social welfare best be served in terms of this value? Has the meaning and value we ascribe to the private ownership of property changed through time?

One cautionary note might be in order. This unit does not question the right to own property. Rather it is an exploration of the values and problems of a society which cherishes the concept of private ownership of property.

A major vehicle for much of this analysis will be the current controversy over "open-housing." The student will probably evaluate property concepts largely in terms of this highly controversial question. Finally, it is hoped that the student will begin to orient himself to a broad spectrum of social problems, all connected in some sense with the individual's use of his private property.

SECTION I

"A MAN'S HOME IS HIS CASTLE"

Section I is designed to open up the question of the nature of property rights. The few quotations represent one strongly held position on a controversial issue and should serve to engage the student's interest.

It is quite likely that in many cases students will tend rather quickly to move from the abstract notion of property rights to the specific issue of "open-housing." This seems appropriate, especially in light of the fact that open-housing will be considered throughout the unit.

The student might be asked to hypothesize on the source of property rights. Are they natural or God-given? Are all men entitled to the right to pursue and own property? Are property rights absolute? What limits would you prescribe?

In reference to civil rights, it might be useful to consider priorities implicit in the Congressional testimony. Should the owner or seller have more rights than the prospective buyer? What are the possible implications in either answer? Should laws generally favor the properties classes? Should we encourage the development of a propertied élite? Or, should we place some limitation on the concept of property rights by giving the buyer certain advantages in the market-place?

SECTION II

"LIFE, LIBERTY, AND THE PURSUIT OF . . ."

This section explores the nature and sources of the concept of property rights. Part A presents some statements to the effect that property rights are the natural condition of man. The selections in Part B challenge this concept in a variety of ways.

Part A presents but a small sampling of a fairly common attitude about property: property is basically a right that man possesses as a condition of his existence, a right that may be God-given and which certainly leads to the highest fulfillment of man's hopes and aspirations.

What similarities do these documents possess? Variations? Do they reflect reality? Is property a natural right? If so, is it also a natural right for the Negro? If this right is natural, is it also unlimited? If it is limited, are such limitations also determined by natural law? Can a natural right be properly limited by civil society? If natural rights are limited, are they still natural?

Some students might suggest that the natural right of property is merely a justification for selfish practices of the "robber-barons" such as Carnegie. If this is so, how can we account for the similar views expressed by social critic Henry George? Does this suggest that the belief in property might be more deep-seated in society than a mere justification for wealthy industrialists? An interesting corollary to this might be the consideration of the concept of property rights in American reform movements. To what extent has American reform favored the capitalistic system? Did the labor movement want to overthrow property or merely obtain a bigger slice of the existing economic pie? Are contemporary civil rights advocates opposed to private property as such? To what extent does this reflect a basic value?

Part B suggests that the concept of a property right is anything but natural, that it is determined by competition, instinct, culture, seizure, excess wealth, civil laws, etc. It is not likely that any single view of property deserves to predominate, but once again, the student might profitably be asked what he thinks is the source of the right to property.

It is probable that these documents will create difficulty in defending a natural rights concept. For example, the Black Elk article points out that the Anglo-American ruthlessly seized Sioux land in the Dakotas. Is this an expression of a God-given right to land? Or, does the Black Elk narrative lend credence to the social darwinism of William Graham Sumner? To what extent is the concept of property right merely the articulation of the rules of the game of competition?

Robert Ardrey presents a rather unusual position that property and property rights are an expression of man's instinctual drive for territory. Ardrey sees property as a survival factor for the species.

Lester Frank Ward hints that property rights come into play only when society had developed sufficient wealth above the subsistence level. Ruth Benedict sees property rights as cultural characteristics. Given this evidence, the student might be asked to re-evaluate his hypothesis on the nature of property rights. Can Ardrey, Ward, and Benedict make any contribution here? Are certain of these ideas more fruitful than others?

Thomas Jefferson is frequently associated with the natural rights position because of the Declaration of Independence. Yet, here we see the position that a society is perfectly correct in regulating the distribution of vacant and uncultivated property. What does Jefferson conceive to be the nature of property rights?

Finally, can we speak of rights best in the Alinsky sense, i.e., that rights come to those who are willing to fight for them? Does our history support this contention? Is this really what civil rights organizations have in mind?

It might be useful to spend some time in a critical evaluation of the Congressional testimony in Section I. Which theories best explain the positions taken in the testimony? Are natural rights relevant? Can Sumner explain this testimony? Ardrey? Benedict? Alinsky? What do you think the motives of the real estate men are? Of the Southern Congressman? Does this material now add to our analysis of property rights? Have we changed any of our original ideas?

SECTION III

"FOR THE WELFARE OF MANKIND"

Section III deals with the question of social responsibility. How can the right to property be controlled so that justice can be achieved for a maximum number of people?

Part A presents controls that are generally considered to be part of the "pure" doctrine of property rights. Here we see the concept of stewardship: the owners of property and wealth have a natural obligation to insure the well-being of society.

Part B suggests that stewardship is unworkable, that society has found government regulation of property to be in the public interest.

In reference to Part A the student should be asked to consider the effectiveness of the stewardship concept. Can stewardship work in housing? For example, can we expect real estate concerns to adopt policies that will lead to voluntary open-housing? Can we expect the property owner to use his right wisely and not discriminate on grounds of race?

Why do we see such an emphasis on stewardship? Is it really a mask for socially destructive policies? Can stewardship work only if men are unselfish and good? Do the Puritans and social darwinists see man as inherently good? On the other hand, is there anything inherent in government that makes it good?

Part B presents a sampling of opinion holding that stewardship does not operate sufficiently well to be effective in protecting the public interest. The first four selections are illustrative of social criticism common in the late nineteenth and early twentieth centuries. These articles tend to fit a continuum, from the muckraker Lloyd, to the single-tax advocate George, to the Christian Socialist Gladden, to the leading American Socialist Eugene Debs. As the criticism becomes more radical, the concept of private property as a value tends to disappear. To what extent are these articles attacking injustices? Do they present valid points? Are they in the American tradition? Are they dangerous?

The editorial from The New York Times places the problem of race relations into the context of stewardship and public interest. How can we best achieve justice in the area of housing? Can we rely on the magnanimity of middle class America or do we need strong anti-discriminatory laws? If so, what does this suggest about property rights and the need for societal controls?

SECTION IV

PROPERTY AND THE CONSTITUTION

Section IV attempts to consider the nature of property rights as part of Constitutional law. The documents beg the question as to whether or not Constitutional law has, in fact, clearly recognized the right to ownership and disposal of property. Like other rights valued by the American people, property rights have never been absolute, although some court decisions have supported such a view. Here, as with other rights, consistency tends to be absent.

Section IV offers possibilities for speculation beyond the immediate question of the individual's right to his property. For example, what do these documents suggest about the nature of Constitutional law? About the nature of judicial decision-making? Should the Constitution be interpreted in terms of the intentions of the Founders, of some overriding philosophy, or on the merits of the case itself. Should the temper of public opinion have some force in the judiciary? What are the implications of each of these alternatives for our system of checks and balances? For our concept of democracy or "rule by the people"? All these questions serve to illuminate and develop the basic problem of the section.

The excerpt by Barry Goldwater is the basic foil for the section. Justice Hughes's short comment immediately challenges this concept. These two articles can rest as the foundation for the entire section. If the student feels, from this material, that Hughes's analysis is correct, then he must be willing to suggest that property rights can easily be redefined and possibly eliminated if five judges so decide.

Fletcher v. Peck (#3) is an early case establishing the right of contract. The students might like to debate the correctness of the decision. Should the Supreme Court uphold the land transaction, even though it was a flagrant example of graft? Should not the succeeding legislature be allowed to exercise its responsibility to the citizens who were victimized by dishonesty and fraud?

Justice Miller (#4) and Justice Field in the second slaughterhouse case (#5) and in Pollock (#7) seem to be writing the gospel of wealth into Constitutional law. Some students might see this as justification for Goldwater's view, but this position must be juxtaposed with the police power doctrine as elaborated in Barbier (#6) and In Re Debs (#8). To what extent are these two concepts contradictory? What issues do they raise in terms of cases to come before the Court? Do they suggest that the Court cannot really operate in terms of broad application of the law, but only in terms of each specific case and the issue it presents? If so, what does this suggest about the preliminary statements of Goldwater and Hughes? What light does this throw on the nature of Constitutional law?

Muller, Lochner, Adkins, Morehead, and West Coast Hotel (#9-14) all indicate the difficulty in dealing with the dilemma posed by the right to property and state police power. In each of these cases, the Court recognized limitations upon contracts, yet the Court does not always uphold state police power. The students might be asked to judge these cases for themselves. What is the relationship between broad principle and specific issues?

Adkins, Morehead, and West Coast Hotel (#12-14) present an interesting problem in minimum wage legislation for women. Respectively, in 1922, 1935, and 1936, the Supreme Court had quite similar cases to adjudicate. How can the student account for the fact that West Coast Hotel overturned the previous two cases only nine months after the Morehead decision? Where does this leave Goldwater's concept of property rights?

One answer to this is provided in a short statement from Helvering (#15) which suggests that changing times create the need for new decisions. The short selections from Smith (#16) and Board of Education (#17) however, suggest that the issue is not quite so simple. In discussing the problem of precedent and the authority for Constitutional interpretation, we begin to raise serious questions about the philosophy of our Constitutional system of judicial review. For example, what guidelines should a justice of the Supreme Court follow in reaching a decision? Should the Court be an active law-making branch of the government, or should it practice judicial restraint? Should decisions be based upon the intentions of the Founders or on the philosophies of the justices? To what extent should prevailing public opinion influence judicial activity?

Lichter and Youngstown (#18-19) show that property rights under the Constitution are a continuing question. In Lichter, we see that the requirements of modern warfare subordinate property in the same manner as they subordinate men to arbitrary government conscription. In the steel-seizure case, the Court recognized that property can be taken for government use, but ruled that Congress, not the President, had power to do so in this case. It is interesting to note that this case had four concurring and three dissenting opinions, suggesting a great deal of confusion and disagreement over the issues involved. Consequently, we might speculate on the nature of property rights in the modern era. What are they? Do they, in fact, exist? What does the evidence suggest about the inviolability of property rights?

SECTION V

PROPOSITION FOURTEEN: A CASE STUDY

This section takes us back to the problem of racial integration or "open-housing." The case study deals with California's Proposition 14, a state-wide referendum which nullified open-housing laws then on the books and forbade the state from legislating in this area in the future. Subsequently, the referendum was overturned in the courts, but the issue is still alive in California and in other states. The universal interest in this question is partially illustrated by the fact that all articles in this section appeared in The New York Times.

The case study has been narrowed to four basic themes: (1) the events and conditions leading up to the passage of the Rumford Act which outlawed discrimination in most of California's housing; (2) the passage of a referendum, Proposition 14, striking down California's "open-housing" laws and forbidding future legislation in this field; (3) the resort to the courts which led to the striking down of Proposition 14; and (4) the impact of this issue on California politics.

In Part A the first ten selections briefly illustrate the scope and extent of racial segregation in parts of the state and the types of political action which led to the passage of the Rumford Act. Students should be somewhat cautious in concluding that sit-ins and such led to the enactment of the law, for 1963-64 was an important time for civil rights activity throughout the country. The legislature could, no doubt, perceive great public support for "open-housing" as a political issue.

Selections 11-18 show the development of events which led to the adoption of the referendum. Public opinion was deeply divided in California. Despite opposing appeals from politicians, churchmen, actors, labor leaders, and civil-rights spokesmen, the referendum passed by a two-to-one margin. Clearly, the will of the people was strongly in opposition to "open-housing" legislation.

Selections 19-22 and 25-26 are concerned with the legal battle in the courts, while selections 17, 23, and 24 indicate that the battle over Proposition 14 was not limited to the courtroom. Evidence indicated that the issue helped to elect a new governor and several new legislators. The 1967 California legislature attempted to deal with the issue but became deadlocked.

Part B presents excerpts from the Supreme Court's decision on the constitutionality of Proposition 14 and from a concurring opinion by Justice Douglas and a fairly extensive portion of the dissenting opinion. The Supreme Court affirmed the California Supreme Court's decision that Proposition 14 was unconstitutional, both Courts reasoning that the referendum violated the Fourteenth Amendment to the Constitution primarily because it placed the California government in the position of encouraging discrimination in housing.

The Supreme Court decision raises essential questions: What implications does the decision bear for the concept of property rights? Should the Court be empowered to turn down the decisive vote of the people? If not, how can minorities be protected from an oppressive majority? What does this suggest about democracy in this country?

In dealing with specifics, the students might profitably argue the merits of the case. For example, does the referendum go so far as to put the state government in the position of encouraging discrimination? Or, conversely, does it merely establish the neutrality of the state? Should the state have the authority to prohibit private racial discriminations? Should state-licensed businessmen, such as realtors, be prohibited from racial discrimination under the "equal protection" clause of the Fourteenth Amendment? Does the Court decision help or hamper future efforts in the area of open-housing? Does it now prohibit all repeals of open-housing acts? Does this decision help or hamper governmental efforts to deal with race discrimination?

Perhaps at this point, the students can discuss what they think should happen in open-housing. What kinds of laws would they favor and why? What should be the nature of property rights in this context?

It might be useful for the student to recap what has transpired and make another attempt to state a position on the source and nature of property rights. Are these rights limited in any way? What factors assist us in answering this question? What responsibilities must we as individuals assume in this area? What is the difference between assuming responsibilities and stewardship?

SECTION VI

THE SOCIAL BALANCE

This concluding section attempts to provide articles which will help the student to consider his own responsibilities toward society vis a vis property rights. The section implies perhaps two kinds of problems: open-housing on the one hand, and a potpourri of property-related questions on the other. What responsibilities do each of us have toward society as a whole when we use our property?

In using this section the teacher may wish to use but one or two issues, perhaps those having some local significance, for numerous articles and issues can easily be used in lieu of the items offered.

In each of the situations presented, the free use of property adds to one or more social problems. Discrimination in housing adds to our race problem. Excessive outdoor advertising mars the countryside. The cutting of redwood trees wipes out one of nature's greatest feats. Automobiles produce smog and traffic congestion. To what extent must all of us accept some personal responsibility for these problems?

William Levitt's testimony does not conclusively prove anything about open-housing. It does, however, give weight to the possibility that integration can occur with few problems if encouraged by responsible leadership. This can be considered in relation to the idea that property ownership enhances one's self-esteem, dignity, and status. Should Negroes be encouraged to buy in the suburbs as well as in the ghettos? To what extent should we submerge our feelings for the well-being of society at large?

Galbraith and Packard (#2 and 3) suggest that the American economy has become dangerously overbalanced in the private sector as opposed to the public sector. In other words we spend far more on ourselves largely through property accumulation than we are willing to devote to needed public services. Is this wrong? Should we now be willing to pay higher taxes? Should we now accept some limitations on our individualism?

The subsequent articles deal with other current issues bearing on the balance of private property rights and public interest. Should the owners of redwood acreage be entitled to unlimited logging of these ancient trees? Does society have an overriding interest in this area that will inevitably affect the entire economic character of the region? Is it wrong for the copper miners to refuse to work the anti-water pollution system of the Columbia River? How can we account for the relative lack of progress against air pollution? Does the society have the right to force you to use exhaust devices on your car? To keep you from burning trash? To force you to fill your car up with passengers before entering major cities? Should billboards be kept off our highways, even at possible cost to motel-owners? What are the best interests of society? What compromises should we, as individuals, be willing to make? What burdens should we be willing to assume?

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INTRODUCTION

Every society holds certain values or beliefs in great esteem. People have been known to wage bloody wars on behalf of such concepts. In the United States we have come to place such stress on the concept of "rights." In concrete terms this means that there are certain areas of individual existence that cannot justly be infringed upon by the state or by the society at large. In fact, it can be said that the Cold War between the United States and the Communist world is related to our beliefs in freedom or "rights."

Many of these rights are clearly enumerated in the Constitutions, such as freedom of speech, religion, assembly, press, etc. Other rights, though perhaps not as explicit in the Constitution, have had significant roles to play in our history. One of these rights is the right to own, use, and dispose of one's own property.

Despite our long tradition of political, social, and economic rights, such concepts have, on occasion, become sources of controversy. For example, in times of emergency or stress we have passed laws against certain kinds of speech. For a portion of our history, only Protestants could hold public office. Until recently, political rights for the Negro were practically nonexistent.

Similarly, property rights have also come under scrutiny at various times and places. As a nation committed to capitalism or private enterprise, we have had to deal with countless controversies which strike at the heart of one of our basic values--the right to property. What are the sources of this right? Are there limits to the exercise of this right? What is the nature of our own individual responsibility as property owners toward society as a whole?

This unit should raise these and numerous other questions. As with most questions of values and ethics, there are no "correct" answers. Perhaps the welfare of society today and tomorrow will suggest that some answers are better than others, but nonetheless, this is a problem for you as an individual to grapple with and to resolve in your own way.

SECTION I

"A MAN'S HOME IS HIS CASTLE"

The 1960's have been marked by intense civil rights activity and by legislation growing out of the Negro's struggle for complete equality in our society. Recent laws have extended the Negro's voting power, stimulated employment and integrated schooling. In 1966, another civil rights bill was before Congress. Among other things, this legislation proposed to outlaw discrimination because of race, color, religion, or national origin in the purchase, rental, lease, financing, use and occupancy of housing throughout the nation. Failure to comply could mean a contempt of court citation and punishment up to $1,000 and/or one year imprisonment.

Extensive hearings were held by a subcommittee of the Committee on the Judiciary, House of Representatives. Following are some brief excerpts from testimony opposed to the "open-housing" portion of the 1966 Civil Rights Act.

1. Armistead I. Selden, Representative from Alabama:[1]

> I . . . prefer to argue the power of the Federal Government, of any government, to interfere with the rights of citizens to exercise their rights over their property as this bill seeks to do. And although we are going to be bombarded as never before with propaganda about the conflict between "property rights" and "human rights," in truth there is no such conflict. Property is simply a thing. But the ownership of property by human beings in our society and practically every other brings with it a myriad of rights and responsibilities which are indisputably "human rights." Among these rights is the right to manage and sell and rent and use that property in the manner which the individual's conscience and nature tells him will bring him the fullest satisfaction of and expression of his character and self. . . .

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[1] House of Representatives, 89th Cong., 2nd Sess., Civil Rights, 1966: Hearings Before Subcommittee No. 5 of the Committee on the Judiciary (Government Printing Office, Washington, 1966), 1559, 1586, 1639-1640.

> What this title would do, Mr. Chairman, constitutes a substantial arbitrary imposition on the homeowner. It constitutes the use of force to vest ownership against the owner's consent. It gives a preference to one party to a proposed transaction by denying to the other his freedom of choice. . . .

2. Alan L. Emlen, Chairman, Realtor's Washington Committee, National Association of Real Estate Boards:[2]

> [In] title IV the Congress would authorize the omnipotent arm of the Attorney General to reach into a private home, unlatch the door, and proclaim to the owner that he must rent a room or sell the home to a person with whom he does not choose to execute a rental or sales agreement. . . .

3. George A. McCanse, Chairman of the Legislative Committee, Texas Real Estate Association:[3]

> I pointed out that each time we citizens of this country lose any of the rights that go with the ownership of property, we are moving that much closer to a centralized government in which ultimately the right to own property would be denied. . . .
>
> The history of our country shows that Government does not relinquish any of the rights which it acquires from the people, but rather that it continues to take more and more. The right to own property is the individual's bastion against the inroads of Government and any assertion of power which abridges these rights is a step towards the ultimate loss of all of them. . . .

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[2] *Ibid.*, 1586.

[3] *Ibid.*, 1639-1640.

SECTION II

"LIFE, LIBERTY, AND THE PURSUIT OF . . ."

This section explores the nature and sources of the concept of property rights. Part A presents some statements to the effect that property rights are the natural condition of man. The selections in Part B challenge this concept in a variety of ways.

Part A presents but a small sampling of a fairly common attitude about property: property is basically a right that man possesses as a condition of his existence, a right that may be God-given and which certainly leads to the highest fulfillment of man's hopes and aspirations.

What similarities do these documents possess? Variations? Do they reflect reality? Is property a natural right? If so, is it also a natural right for the Negro? If this right is natural, is it also unlimited? If it is limited, are such limitations also determined by natural law? Can a natural right be properly limited by civil society? If natural rights are limited, are they still natural?

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Finally, can we speak of rights best in the Alinsky sense, i.e., that rights come to those who are willing to fight for them? Does our history support this contention? Is this really what civil rights organizations have in mind?

It might be useful to spend some time in a critical evaluation of the Congressional testimony in Section I. Which theories best explain the positions taken in the testimony? Are natural rights relevant? Can Sumner explain this testimony? Ardrey? Benedict? Alinsky? What do you think the motives of the real estate men are? Of the Southern Congressman? Does this material now add to our analysis of property rights? Have we changed any of our original ideas?

SECTION II

"LIFE, LIBERTY, AND THE PURSUIT OF . . . "

Many people have spoken of property rights. Probably most Americans favor the concept. Yet, probably few have given much thought to the sources of such a right. The documents in this section are a brief sampling of some of the thinking on the subject.

A. "Unalienable" Rights

The Declaration of Independence uses the words ". . . unalienable right to life, liberty, and the pursuit of happiness. . . ." Some historians feel that happiness in this case refers to property. For this assumption, they refer to earlier writings by the English philosopher John Locke.

All of this raises certain philosophical and practical questions about the nature of rights. Are they "unalienable"? Are they absolute? How did we get these rights? Can they be taken away?

1. As with a great many questions in American history, we can begin with the Puritans. In 1673 a Puritan minister, Richard Baxter published A Christian Directory:[1]

> Quest. 2) Is it a duty to desire and endeavor to get, and prosper, and grow rich by our labours . . . ?
>
> Answ. It is a sin to desire Riches as worldlings and sensualists do, for the provision and maintenance of fleshy lusts and pride: But a duty, to labour not only for labour sake, formally resting in the act done, but for the honest increase and provision, which is the end of our labour; and therefore to choose a

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[1] Richard Baxter, A Christian Directory (N. Simmons, London, 1673), 447-448.

> gainful calling rather than another that we may be able to do good, and relieve the poor. . . .

Quest. 3)	Will not Riches excuse one from Labouring in a Calling?
Answ.	No: but rather bind them to it the more: For he that hath most wages from God, should do him most work. Though they have no outward want to urge them, they have as great a necessity of obeying God, and doing good to others, as any other men have that are poor. . . .

> The publick welfare, or the good of many, is to be valued above our own. Every man therefore is bound to do all the good he can to others, especially for the Church and Commonwealth; And this is not done by Idleness, but by Labour! As the Bees labour to replenish their hive, so man being a sociable creature, must labour for the good of the society which he belongs to, in which his own is contained as a part. . . .

2. The novelist James Fenimore Cooper wrote in 1838:[2]

> As property is the base of all civilization, its existence and security are indispensable to social improvement. Were it possible to have a community or property, it would soon be found that no one would toil, but that men would be disposed to be satisfied with barely enough for the supply of their physical wants, since none would exert themselves to obtain advantages solely for the use of others. . . .
>
> It is not known that man exists anywhere without establishing rules for the protection of property. Even insects, reptiles, beasts and birds, have their several possessions, in their nests, dens and supplies. So completely is animal exertion, in general, whether in man or beast, dependent on the enjoyment of this right, under limitations which mark their several conditions, that we may infer that the rights of property, to a certain extent, are founded in nature. The food obtained by his toil, cannot be taken from the mouth of man, or beast, without doing violence to one of the first of our natural rights. We apply the term of robber, or despoiler, to the reptile or bird, that preys on the aliment of another animal, as well as to the human thief. So long as natural justice is admitted to exist, the party assailed, in such cases, has a right to defend his own. . . .

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[2] James Fenimore Cooper, The American Democrat, or Hints on the Social and Civic Relations of the United States of America (H. and E. Phinney, Cooperstown, 1838), 135-137.

> The first great principle connected with the rights of property, is its inviolability in all cases in which the laws leave it in possession of the proprietor. Every child should be taught to respect the sanctity of his neighbour's house, garden, fields and all that is his. On those parts of another's possessions, where it is permitted to go, he should go with care not to abuse the privilege, and from those parts which he is forbidden to use, he should religiously abstain. The child that is properly impressed in infancy, with the rights of property, is in little danger of committing theft in after life, or, in any other manner of invading that which is the just possession of another. . . .

3. Noah Porter, President of Yale in the late nineteenth century, expressed a common view held by intellectuals of his age:[3]

> The duty to possess and acquire property implies _the right to property_. This introduces the subject of _rights in general_, and the duties which every man owes to himself with respect to his separate rights as an individual. The duty to recognize and concede the rights of others, as also the relation of rights to duties, falls under another category, and will be considered in another place. We assume that there are other conditions for individual welfare which hold a place similar to property with respect to man's well-being; that each man must enjoy these conditions for himself, and feel himself secure in them, in order to his highest good, --in which are included social enjoyment and comfort, the prolongation of life, with exemption from annoyance and injury on the part of others. Of these essential conditions to human welfare, the secure possession and enjoyment of property are one example. . . .
>
> Property, being classed with life and liberty as one of the essential and universal conditions of human welfare, is the subject of one of those moral claims which men call rights by eminence, i.e., one of the _inalienable and natural rights_. This right is enforced by the same authority, and subjected to the same limitations, which pertain to the right to liberty and life. To these claims, the law of love requires a universal and ready recognition on the part of all men. This right inheres by all with respect to all their fellows. Nothing but extraordinary individual and social conditions can excuse or justify its being denied or withheld by one man with respect to the other. . . .

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[3] Noah Porter, _The Elements of Moral Science_ (Charles Scribner's Sons, New York, 1885), 365, 410.

4. Andrew Carnegie, the great steel magnate, often considered to be the author of the concept of "gospel of wealth," wrote:[4]

> Objections to the foundations upon which society is based are not in order, because the condition of the race is better with these than it has been with any others which have been tried. Of the effect of any new substitutes proposed we cannot be sure. The Socialist or Anarchist who seeks to overturn present conditions is to be regardedas attacking the foundation upon which civilization itself rests, for civilization took its start from the day that the capable, industrious workman said to his incompetent and lazy fellow, "If thou dost not sow, thou shalt not reap," and thus ended primitive Communism by separating the drones from the bees. One who studies this subject will soon be brought face to face with the conclusion that upon the sacredness of property civilization itself depends--the right of the laborer to his hundred dollars in the savings bank, and equally the legal right of the millionaire to his millions. To those who propose to substitute Communism for this intense Individualism the answer, therefore, is: The race has tried that. All progress from that barbarous day to the present time has resulted from its displacement. Not evil, but good, has come to the race from the accumulation of wealth by those who have the ability and enerty that produce it. . . . Our duty is with what is practicable now; with the next step possible in our day and generation. It is criminal to waste our energies in endeavoring to uproot, when all we can profitable or possibly accomplish is to bend the universal tree of humanity a little in the direction most favorable to the production of good fruit under existing circumstances. We might as well urge the destruction of the highest existing type of man because he failed to reach our ideal as to favor the destruction of Individualism, Private Property, the Law of Accumulation of Wealth, and the Law of Competition; for these are, the highest results of human experience, the soil in which society so far has produced the best fruit. Unequally or unjustly, perhaps, as these laws sometimes operate, and imperfect as they appear to the Idealist, they are, nevertheless, like the highest type of man, the best and most valuable of all that humanity has yet accomplished.

5. Henry George, an outspoken critic of capitalism, was the author of Progress and Poverty, one of the most widely read books in the second

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[4] Andrew Carnegie, "Wealth," North American Review, 148 (June, 1889), 656-657.

half of the 19th century. In it George wrote:[5]

> The equal right of all men to the use of land is as clear as their equal right to breathe the air--it is a right proclaimed by the fact of their existence. For we cannot suppose that some men have a right to be in this world and others no right.
>
> If we are all here by the equal permission of the Creator, we are all here with an equal title to the enjoyment of his bounty--with an equal right to the use of all that nature so impartially offers. This is a right which is natural and inalienable; it is a right which vests in every human being as he enters the world, and which during his continuance in the world can be limited only by the equal rights of others. . . .

B. "Unalienable" Rights Questioned

Not all writers agree with the doctrine of natural rights. The following selections suggest alternative ways of viewing property rights.

1. A Dakota Sioux Indian related how his tribal lands were transferred to the white man:[6]

> [The Indian tells that the white man drew up the treaty himself by which he took the Sioux lands and that the Indians did not want the treaty. The white man later violated the terms of his own treaty.
>
> During a period of hunger, the Indians were forced to give up half of the remaining land and another treaty was made.]

2. William Graham Sumner, professor at Yale, was considered to be the foremost American proponent of Herbert Spencer's social darwinism:[7]

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[5] Henry George, Progress and Poverty: An Inquiry Into the Cause of Industrial Depressions, and of Increase of Want with Increase of Wealth The Remedy (Henry George & Co., New York, 1879), 303-304.

[6] John G. Neihardt, Black Elk Speaks, Being the Life Story of a Holy Man of the Oglala Sioux (University of Nebraska Press, Lincoln, 1961), 234-235.

[7] Albert Galloway Keller, ed., Earth-Hunger and Other Essays by William Graham Sumner (Yale University Press, New Haven, 1913), 80-83.

> [Sumner describes some taboos of primitive societies and states that our notion of "rights" derives from such codes of conduct. Rights are mores rather than laws. "Hard times" engender conflict and a redefinition of these concepts. In weak states, rights become insecure. Sumner sees the belief in natural rights a vestige of 18th century mythology. Agitants in a society often protest that they are protecting the rights of its citizens. Sumner sees "rights" as "rules of the game of social competition" which change according to conditions.]

3. The playwright Robert Ardrey has, for some time, pursued an interest in anthropology. His two books on the subject, African Genesis and The Territorial Imperative have been best sellers. From The Territorial Imperative:[8]

> [Ardrey defines territory as the space which an animal claims and defends, and states that the possession of such expands the energy of the proprietor. Ardrey claims that man is a territorial animal. He cites various supporters of this view. He describes the defense of property by baboons and evidence of a respect for neighbor's rights among lemurs, monkeys, and timber wolves.]

4. Lester Frank Ward was one of the first American sociologists. He and Frank Dealey offered an explanation of the source of property rights:[9]

> The true economic idea of property is the possession of useful commodities in excess of immediate needs. But as has been pointed out by many writers, property in this sense is impossible except under the protection of law and under the power of the state. When, then, the regime of law begins, rights are recognized and the state protects them. Now for the first time there arises the possibility of property, and it is at this stage that property as a human institution begins. When a man can own a camel or a buffalo skin, or a spear, or a bronze axe, and be secured in its possession without having to fight for it, or conceal it, it becomes property, and next to personal safety, the first and most important function of the state is to guarantee the security of rightful possession. . . .

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[8] Robert Ardrey, The Territorial Imperative: A Personal Inquiry Into the Animal Origins of Property and Nations (Athaneum, New York, 1966), 3-5 101-102, 248-257.

[9] Lester Frank Ward and James Q. . Dealey, A Textbook of Sociology (The Macmillan Co., London, 1905), 93-94.

5. In order to widen our perspective, it sometimes helps to look at other cultures. From Ruth Benedict's Patterns of Culture:[10]

> [The writer first describes the attitude toward wealth among the Kwakuitl on the N. W. coast. Following complex rules of behavior, these men used their goods to shame their poorer rivals and to enhance their individual stature in the community. The Zuni however put little emphasis on wealth; membership in a clan obtained power and prestige, and ceremonial and social activities were practiced by people a acting in groups.]

6. As one might expect, Thomas Jefferson, author of the Declaration of Independence, addressed himself to the concept of property:[11]

> From the nature and purpose of civil institutions all the lands within the limits, which any particular society has circumscribed around itself, are assumed by that society, and subject to their allotment; this may be done by themselves assembled collectively, or by their legislature, to whom they may have delegated sovereign authority: and, if they are allotted in neither of these ways, each individual of the society, may appropriate to himself such lands as he finds vacant, and occupancy will give him title.

7. Jefferson also maintained:[12]

> Whenever there is in any country, uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right.
>
> [L]egislators cannot invent too many devices for subdividing property. . . .

8. Saul Alinsky, a professional radical, stated that:[13]

> [Alinsky contends that people must get their freedoms actively and that these things are never a gift.]

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[10] Ruth Benedict, Patterns of Culture (Houghton-Mifflin Co., New York, 1934), 188-189, 193, 78.

[11] Andrew A. Lipscomb, ed., The Writings of Thomas Jefferson (Thomas Jefferson Memorial Association, Washington, D. C., 1903), 207.

[12] Paul Leicester Ford, The Writings of Thomas Jefferson (Putnam's Sons, New York, 1896), VII, 36, 35.

[13] Saul Alinsky, "A Professional Radical Moves In on Rochester," Harper's Magazine, CCXXXI (July, 1965), 54.

SECTION III

"FOR THE WELFARE OF MANKIND"

It is obvious that property can be misused. Employees can be exploited; products can be misrepresented; money can be used to bribe judges, and so forth.

Consequently, society has continually recognized the need for controls on the exercise of property rights. The nature of these controls has always been the heart of the problem. Some advocates of private property and capitalism have felt that the individual responsibility of the property owner would suffice. Others have claimed that government regulation would provide the only effective solution.

A. Stewardship

Those who advocate *laissez faire* (government "hands off") are faced with the problem of ill use of property. How do they intend to control the use of property without government interference?

1. In 1631 the Puritan William Perkins stated:[1]

> How a man may with good conscience possesse and use riches?
>
> The Answer to this Question I propound in foure Rules:
>
> *I. Rule*. They which have riches are to consider, that God is not only the soveraigne Lord, but the Lord of their riches, and that they themselves are but the stewards of God, to employ and dispense them, according to his will. Yea further, that they are to give an account unto him, both for the having and using of those riches, which they have and use. . . .
>
> *II. Rule*. We must use speciall moderation of minde, in the possessing and using of riches, and be

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[1] William Perkins, *The Whole Treatise of the Cases of Conscience* (John Legatt, London, 1631), 126-128.

> content with our estate, so as wee set not the affection of our heart upon our riches, Psal. 61.10. If riches increase, set not your heart upon them; that is, place not your love and confidence in them; be not puffed up with pride and ambition, because you are rich, Luk. 6.24. Woe be to you that are rich, that is, that put confidence in your riches, Matth. 5.3. Blessed are the poore in spirit. . . .
>
> IV. Rule. We must so use and possess the goods we have, that the use and possession of them may tend to God's glory, and the salvation of our soules. Rich men must be rich in good works, and together with their riches, lay up a good foundation in conscience, against the evill day, 1 Tim. 6.18. . . .

2. McGuffey's Readers for elementary school students enjoyed almost universal appeal in the nineteenth century. Following is his advice to rich boys:[2]

> 1. The good boy whose parents are rich, has fine clothes to wear; he rides on a pretty horse; or in a coach, and has servants to wait upon him. But, for all that, he does not think that he is better than other boys.
>
> 2. He knows that rich people are not all good; and that God gives a great deal of money to some persons, in order that they may assist those who are poor.
>
> 3. He speaks kindly to all his father's servants, and does not call them to wait upon him, when he sees that they are busy; and he always remembers to thank them for what they do for him.
>
> 4. He never gives them any trouble that he can avoid. He is careful not to make a noise in the house, or to break any thing, or to put it out of its place, or to tear his clothes. When any of the servants are sick, he often thinks of them; he likes to go and see them, and ask how they do.
>
> 5. He likes to go with his parents to visit poor people, in their cottages, and gives them all the money he can spare. He often says: "If I were a man and had plenty of money, I think no person who lived near me should be very poor."

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[2] William H. McGuffey, McGuffey's Newly Revised Electic Second Reader: Containing Progressive Lessons in Reading and Spelling (Clark, Austin, and Smith, New York, 1848), 38.

> 6. "I would build a great many pretty cottages for poor people to live in, and every cottage should have a garden and a field, in order that the people might have vegetables, and might keep a cow, and a pig, and some chickens; they should not pay me much rent. I would give clothes to the boys and girls who had no money to buy wclothes with, and they should all learn to read and write, and be very good."
>
> Question: Do riches make one person better than another? What does? How does a good boy treat the servants? How does he feel toward poor people? What does he think he would do, if he were a man?

3. Mark Hopkins, President of Williams College in 1869:[3]

> Those who have done the most for our public institutions, and done it most nobly, have been men with a strong desire of property, who knew the worth of what they gave; generally men who had accumulated it by their own industry, but who gave, nevertheless, cheerfully and gladly, in view of great interests to be promoted, and of the subordinate place which this desire holds as the purveyor of God, and the appointed servant of principles higher than itself.

4. The Rt. Reverend William Lawrence, Episcopal Bishop of Massachusetts, speaking in 1901:[4]

> I have in mind now a man of wealth (you can conjure up many like him) who lives handsomely and entertains; he has everything that purveys to his health and comfort. All these things are tributary to what? To the man's efficiency in his complete devotion to the social, educational, and charitable interests to which he gives his life. He is Christ's as much as was St. Paul, he is consecrated as was St. Francis of Assisi; and in recognition of the bounty with which God has blessed him he does not sell all that he has, but he uses all that he has, and, as he believes, in the wisest way, for the relief of the poor, the upbuilding of social standards, and the upholding of righteousness among people. The Christian centuries, with all their asceticism and monasticism, with their great and noble saints, have, I

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[3] Mark Hopkins, The Law of Love and Love as a Law; or, Moral Science, Theoretical and Practical (Charles Scribner and Co., New York, 1869), 104.

[4] Rt. Rev. William Lawrence, "The Relation of Wealth to Morals," The World's Work, I (1900-1901), 289-290.

believe, never witnessed a sweeter, more gracious, and more complete consecration than that which exists in the lives of hundreds of men and women in the cities and towns of this country, who, out of a sense of grateful service to God for His bounty, are giving themselves with all joy to the welfare of the people. And if ever Christ's words have been obeyed to the letter, they are obeyed to-day by those who are living out His precepts of the stewardship of wealth.

As we think of the voluntary and glad service given to society, to the State, the Church, to education, art, and charity, of the army of able men and women who, without thought of pay, are serving upon directories of savings banks and national banks, life insurance companies, railroads, mills, trusts and corporations, public commissions, and offices of all sorts, schools and colleges, churches and charities; as we run our thoughts over the free services of the doctors, of the lawyers, for their poorer clients, we are amazed at the magnitude of unpaid service, which is now taken for granted, and at the cheerful and glad spirit in which it is carried through. Material prosperity is helping to make the national character sweeter, more joyous, more unselfish, more Christlike.

5. Andrew Carnegie in 1889:[5]

There remains, then, only one mode of using great fortunes; but in this we have the true antidote for the temporary unequal distribution of wealth, the reconciliation of the rich and the poor -- a reign of harmony -- another ideal, differing, indeed, from that of the Communist in requiring only the further evolution of existing conditions, not the total overthrow of our civilization. It is founded upon the present most intense individualism, and the race is prepared to put it in practice by degrees whenever it pleases. Under its sway we shall have an ideal state, in which the surplus wealth of the few will become, in the best sense, the property of the many, because administered for the common good, and this wealth, passing through the hands of the few, can be made a much more potent force for the elevation of our race than if it had been distributed in small sums to the people themselves. Even the poorest can be made to see this, and to agree that great sums gathered by some of their fellow-citizens and spent for public purposes, from which the masses reap the principal benefit, are more valuable to them than if scattered among them through the course of many years in trifling amounts. . . .

This, then, is held to be the duty of the man of Wealth: First, to set an example of modest, unostentatious living, shunning display or extravagance; to provide moderately for the legitimate wants of those dependent upon him; and after doing so to consider all surplus revenues which come to him simply as trust funds, which he is called upon to administer, and strictly bound as a matter of duty to administer in the manner which, in his judgment, is best calculated to produce the most beneficial results for the community--the man of wealth thus becoming the mere agent and trustee for his poorer brethren, bringing tb their service his superior wisdom, experience, and ability to administer doing for them better than they would or could do for themselves. . . .

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[5] Andrew Carnegie, "Wealth," North American Review, 148 (June, 1889), 660-664.

In bestowing charity, the main consideration should be to help those who will help themselves; to provide part of the means by which those who desire to improve may do so; to give those who desire to rise the aids by which they may rise; to assist, but rarely or never to do all. Neither the individual nor the race is improved by alms-giving. Those worthy of assistance, except in rare cases, seldom require assistance. The really valuable men of the race never do, except in cases of accident or sudden change. Every one has, of course, cases of individuals brought to his own knowledge where temporary assistance can do genuine good, and these he will not overlook. But the amount which can be wisely given by the individual for individuals is necessarily limited by his lack of knowledge of the circumstances connected with each. He is the only true reformer who is as careful and as anxious not to aid the unworthy as he is to aid the worthy, and, perhaps, even more so, for in alms-giving more injury is probably done by rewarding vice than by relieving virtue. . . .

Thus is the problem of Rich and Poor to be solved. The laws of accumulation will be left free; the laws of distribution free. Individualism will continue, but the millionaire will be but a trustee for the poor; intrusted for a season with a great part of the increased wealth of the community, but administering it for the community far better than it could or would have done for itself. The best minds will thus have reached a stage in the development of the race in which it is clearly seen that there is no mode of disposing of surplus wealth creditable so thoughtful and earnest men into whose hands it flows save by using it year by year for the general good. This day already dawns. But . . . yet the man who dies leaving behind him millions of available wealth, which was his to administer during life, will pass away "unwept, unhonored, and unsung," no matter to what uses he leaves the dross which he cannot take with him. Of such as these the public verdict will then be: "The man who dies thus rich dies disgraced."

Such, in my opinion, is the true Gospel concerning Wealth, obedience to which is destined some day to solve the problem of the Rich and the Poor, and to bring "Peace on earth, among men Good-Will."

6. Harry G. Emstrom, President of the New York State Association of Real Estate Boards, speaking in 1966 in opposition to Title IV of the 1966 Civil Rights Act:[6]

> I should like to make clear that our association is dedicated to equal opportunity in the housing field. Our policy states that we will support and promote the right of an individual to own real property and to exercise and enjoy the freedom of this ownership. We recognize that this is not a privilege of any particular group, but one that is possessed by all of our citizens.

B. Muckrakers to Socialists

There have been many critics of the concept that stewardship can be relied on to protect the public interest. During the late nineteenth and early twentieth centuries, an increasing number of writers described what they considered to be undesirable features of unregulated capitalism. There was considerable evidence to support these views.

Many episodes dramatized for Americans the existence of uncontrolled and irresponsible overlords. One of the first was the formation of the gigantic United States Steel Corporation. This was followed by scandals in the railroad industry and by legal action taken by the government against the Standard Oil Company and tobacco trusts. These and other developments were candidly portrayed in print by the sordid realism of journalists, humanitarians, labor leaders, and others.

Proposed solutions to the economic and social problems of the day ran the gamut from limited regulation as suggested by muckrakers to the complete overthrow of the economic system as recommended by the socialists and other radicals. Much legislation emerged from Congress during this period. Most notable were the Sherman Anti-Trust Act and the Interstate Commerce Act.

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[6] House of Representatives, 89th Cong., 2nd Sess., *Civil Rights, 1966*, 1635.

1. Henry Demarest Lloyd was one of a group called "muckrakers." It was their assumption that if the people really knew what was going on in industry, they would seek to change things for the better. Lloyd wrote Wealth Against Commonwealth in 1894:[7]

> We are very poor. The striking feature of our economic condition is our poverty, not our wealth. We make ourselves "rich" by appropriating the property of others by methods which lessen the total property of all. . . . Modern wealth more and more resembles the winnings of speculators in bread during famine--worse, for to make the money it makes the famine. What we call cheapness shows itself to be unnatural fortunes for a very few, monstrous luxury for them and proportionate deprivation for the people, judges debauched, trustees dishonored, Congress and State legislatures insulted and defied, when not seduced, multitudes of honest men ruined and driven to despair, the common carrier made a mere instrument for the creation of a new baronage, an example set to hundreds of would-be commercial Caesars to repeat this rapine in other industries and call it "business," a process set in operation all over the United States for the progressive extinction of the independence of laboring men, and all business men except the very rich, and their reduction to a state of vassalage to lords or squires in each department of trade and industry. All these--tears, ruin, dishonor, and treason--are the unmarked additions to the "price marked on the goods." . . .
>
> The new wealth now administers estates of fabulous extent from metropolitan bureaus, and all the profits flow to men who know nothing of real business out of which they are made. Red tape, complication, the hired man, conspiracy have taken the place of the watchful eye of the owner, the old-fashioned hand at the plough that must "hold or drive." We now have Captains of Industry, with a few aids, rearranging from office-chairs this or that industry, by mere contrivances of wit compelling the fruits of the labor of tens of thousands of their fellows, who never saw them, never heard of

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[7] Henry Demarest Lloyd, Wealth Against Commonwealth (Harper and Brothers, New York, 1894), 500-501, 512, 523-524.

them, to be every day deposited unwilling and unwitting to their own credit at the bank; setting, as by necromancy, hundreds of properties, large and small, in a score of communities, to flying through invisible ways into their hands; sitting calm through all the hubbub raised in courts, legislatures, and public places, and by dictating letters and whispering words remaining the master magicians of the scene; defying, though private citizens, all the forces and authorities of a whole people; by the mere mastery of compelling brain, without putting hand to anything, opening or closing the earth's treasures of oil or coal or gas or copper or what not; pulling down or putting up great buildings, factories, towns themselves; moving men and their money this way and that; inserting their will as part of the law of life of the people. . . .

Against the principles, and the men embodying them and pushing them to extremes--by which the powers of government, given by all for all, are used as franchises for personal aggrandizement; by which, in the same line, the common toil of all and the common gifts of nature, lands, forces, mines, sites, are turned from service to selfishness, and are made by one and the same stroke to give gluts to a few and impoverishment to the many--we must plan our campaign. The yacht of the millionaire incorporates a million days' labor which might have been given to abolishing the slums, and every day it runs the labor of hundreds of men is withdrawn from the production of helpful things for humanity, and each of us is equally guilty who directs to his own pleasure the labor he should turn to the wants of others. Our fanatic of wealth reverses the rule that serving mankind is the end and wealth an incident, and has made wealth the end and the service an accident, until he can finally justify crime itself if it is a means to the end--wealth--which has come to be the supreme good; and we follow him. . . .

If the private use of private ownership of highways is to go, the private ownership must go. There must be no private use of public owner or public property. These are created by the common sacrifices of all, and can be rightfully used only for the common good of all--from all, by all, for all. All the grants and franchises that have been given to private hands for private profit are void in morals and void in that higher law which sets the copy for the laggard pens of legislatures and judges. "No private use of public powers" is but a threshold truth. The universe, says Emerson, is the property of every creature in it. . . .

2. Henry George may have been the most popular reformer of his age. He saw the ills of the country as related to the distribution and use of land. From Progress and Poverty published in 1879:[8]

> What has destroyed every previous civilization has been the tendency to the unequal distribution of wealth and power. This same tendency, operating with increasing force, is observable in our civilization to-day, showing itself in every progressive community, and with greater intensity the more progressive the community. Wages and interest tend constantly to fall, rent to rise, the rich to become very much richer, the poor to become more helpless and hopeless, and the middle class to be swept away. . . .
>
> The reform I have proposed accords with all that is politically, socially, or morally desirable. It has the qualities of a true reform, for it will make all other reforms easier. What is it but the carrying out in letter and spirit of the truth enunciated in the Declaration of Independence --the "self-evident" truth that is the heart and soul of the Declaration--"That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them are life, liberty, and the pursuit of happiness!"
>
> These rights are denied when the equal right to land-- on which and by which men alone can live--is denied. Equality of political rights will not compensate for the denial of the equal right to the bounty of nature. Political liberty, when the equal right to land is denied, becomes, as population increases and invention goes on, merely the liberty to compete for employment at starvation wages. This is the truth that we have ignored. And so there come beggars in our streets and tramps on our roads; and poverty enslaves men whom we boast are political sovereigns; and want breeds ignorance that our schools cannot enlighten; and citizens vote as their masters dictate; and the demagogue usurps the part of the statesman; and gold weighs in the scales of justice; and in high places sit those who do not pay to civic virtue even the compliment of hypocrisy; and the pillars of the republic that we thought so strong already bend under an increasing strain. . . .
>
> In allowing one man to own the land on which and from which other men must live, we have made them his bondsmen in a degree which increases as material progress goes on. This is the subtile alchemy that in ways they do not realize is extracting from the masses in every civilized country

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[8] Henry George, Progress and Poverty, 475, 490, 493.

> the fruits of their weary toil; that is instituting a harder and more hopeless slavery in place of that which has been destroyed; that is bringing political despotism out of political freedom, and must soon transmute democratic institutions into anarchy.
>
> It is this that turns the blessings of material progress into a curse. It is this that crowds human beings into noisome cellars and squalid tenement houses; that fills prisons and brothels; that goads men with want and consumes them with greed; that robs women of the grace and beauty of perfect womanhood; that takes from little children the joy of innocence of life's morning.
>
> Civilization so based cannot continue. The eternal laws of the universe forbid it. Ruins of dead empires testify, and the witness that is in every soul answers, that it cannot be. . . .

3. Religious leaders were among the reformers of the Gilded Age. Their philosophy, called "The Social Gospel," was stated by Washington Gladden. From Tools and the Man written in 1893:[9]

> We are living under a regime of private property. The vast wealth that this teeming civilization has brought forth is nearly all in the hands of individual owners. There are government buildings here and there, . . . but the great mass of all that the land brings forth, and the railways and the ships carry, and the factories transform, and the merchants distribute, is individual property. Combinations of individuals, called companies or corporations, hold much of this wealth, but this form of ownership is only a modification or extension of private ownership; the rights of the individual in all these combinations are more or less sharply discriminated. . . .
>
> The notion . . . that property is land is something peculiarly sacred and indefeasible, that it is a right which the state cannot touch, that every interference with landed property is spoilation and piracy, has no basis in history or reason. . . .
>
> The soundest jurisprudence makes the right of the state superior to the right of any private proprietor. The land is held by the state for the benefit of the whole people, and the right of private proprietors cannot be allowed to override or obstruct the rights of the whole people.

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[9] Washington Gladden, Tools and the Man; Property and Industry Under the Christian Law (Houghton-Mifflin and Co., Boston, 1893), 56, 71-72, 74, 79.

> The moment it can be made to appear that the welfare of the whole people would be promoted by the resumption of the control of the land by the state, that moment the abolition of private property in land will be a political necessity. Compensation to individual owners would, of course, be equitable and imperative; but no supposed sacredness of individual tenure could divest the people of any nation of their supreme right to the national domain. . . .
>
> The Nation, thus ordained by God, and intrusted by him with a portion of the earth's surface as its domain and treasure-house, exists in the earth for the fulfillment of the divine purpose, for the establishment here of righteousness and peace, for the maintenance of freedom and order, for the building up of the kingdom of heaven. The end which it must seek is not the welfare of certain favored classes, but the welfare of all,--the physical, intellectual, and moral welfare of the whole people. . . .
>
> It is not by sufferance of the landowners that the rest of mankind are on this planet: All of us have rights here; standing-room is ours by right; a chance to earn our living here is ours by right; and the state must permit none of its citizens in any wise to abridge or obstruct these rights. No man's right of private property in land can be so sacred as every man's right to standing-room on the face of the earth. And in all its laws of property and its theories of land tenure, the state is bound to keep the just proportion between the more sacred and the less sacred rights. . . .

4. Eugene V. Debs was the main force in the American Socialist Party until his death in 1926. Twice he served prison sentences for his radical activities. In 1920 he ran for the Presidency from the federal prison at Terra Haute, Indiana. In a speech delivered before being sentenced by a Federal judge in 1918, Debs stated:[10]

> [Debs describes the piteous condition of laborers, men, women and children, who work in the nation's factories and claims that the 5 per cent of the population who run industry in fact rule the land.]

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[10] Speeches of Eugene V. Debs (International Publishers, New York, 1928), 74-76.

5. From a New York Times editorial, May 12, 1966:[11]

> [The writer contends that the most pernicious form of discrimination is the practice of forcing minority groups, especially Negroes, to live in segregated areas such as Watts and Bedford-Stuyvesant.]

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[11] The New York Times, May 12, 1966, 44.

SECTION IV

PROPERTY AND THE CONSTITUTION

Several portions of the Constitution give some definition to the nature of Constitutional property rights. But, as with other rights, the concept may seem to depend more on judicial interpretation than on the original document itself.

This section, therefore, is drawn almost entirely from opinions of the United States Supreme Court on key constitutional problems relating to property rights. Most of these selections represent the majority opinion of the Court in each case, but occasionally minority or dissenting opinions are given in order to illuminate some facet of the question at hand.

1. The 1964 Republican Presidential nominee, Barry Goldwater:[1]

> [Goldwater sets forth his belief in the "whole man" and in the protection of private property as the "only durable foundation of Constitutional government in a free society."]

2. Former Chief Justice of the United States Supreme Court, Charles Evans Hughes:[2]

> We are under a Constitution, but the Constitution is what the judges say it is. . . .

3. In 1795, the legislature of Georgia passed an act granting twenty million acres of public lands to four land companies. There was clear

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[1] Barry Goldwater, Where I Stand (McGraw-Hill Book Co., New York, 1964), 15.

[2] As quoted in Bernard Schwartz, The Supreme Court: Constitutional Revolution in Retrospect (The Ronald Press Co., New York, 1957), 4.

evidence that the act was secured through fraud and bribery, and most of the legislators had stock in the companies. Public opinion was aroused, and in 1796 the new legislature repealed the act and took back the land. In the meantime, the land had passed to innocent purchasers whose spokesman, Fletcher, appealed to the Supreme Court claiming breach of contract. Chief Justice John Marshall spoke for the majority of the Court:[3]

> The legislature of Georgia was a party to this transaction; and for a party to pronounce its own deed invalid, whatever cause may be assigned for its invalidity, must be considered as a mere act of power which must find its vindication in a train ofreasoning not often heard in courts of justice. . . .
>
> The principle asserted is, that one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature. . . .
>
> When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community. . . .
>
> It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and, if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation. . . .
>
> Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the constitution viewed, with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed.

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[3] Fletcher V. Peck, 6 Cranch 87, 132, 135, 137-139, (1810).

> The restrictions on the legislative power of the states are obviously founded in this sentiment; and the constitution of the United States contains what may be deemed a bill of rights for the people of each state.
>
> No state shall pass any bill of attainder, _ex post facto_ law, or law impairing the obligation of contracts.
>
> A bill of attainder may affect the life of an individual, or may confiscate his property, or may do both. . . .
>
> An _ex post facto_ law is one which renders an act punishable in a manner in which it was not punishable when it was committed. . . . The legislature is then prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime which was not declared; by some previous law, to render him liable to that punishment. . . .

4. Justice Miller speaking in 1874:[4]

> It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many. . . .

5. In 1879 the carpetbag legislature of Louisiana granted one slaughterhouse exclusive operating privileges in New Orleans for a twenty-five year period. The effect was to throw many slaughterhouses out of business. This act was sustained by the Supreme Court, despite the vigorous dissent of Justice Stephen Field. In 1881, Louisiana rescinded

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[4] Loan Association v. Topeka, 20 Wall 655, 662, (1874).

its action, and the previously favored Butcher's Union Slaughter-House and Livestock Landing Company consequently appealed through the courts. Justice Field now concurred with the majority:[5]

> As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new evangel of liberty to the people: "We hold these truths to be self-evident"--that is so plain that their truth is recognized upon their mere statement--"that all men are endowed" not by edicts of Emperors, or decrees of Parliament, or acts of Congress, but "by their Creator with certain inalienable rights"--that is, rights which cannot be bartered away, or given away, or taken away except in punishment of crime--"and that among these are life, liberty, and the pursuit of happiness. . . ."
>
> Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment.
>
> The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright.
>
> It has been well said that, "The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner the thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the others from employing whom they think proper." . . .

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[5] Butcher's Union Slaughterhouse and Livestock Landing Company v. Crescent City Live-Stock Landing and Slaughter-House Company, III U. S. 746, 756-757 (1883).

6. In 1884, the San Francisco Board of Supervisors passed an ordinance prohibiting ironing and washing in public laundries from 10:00 P.M. to 6:00 A.M. The regulation was challenged as a violation of the Fourteenth Amendment to the Constitution. Justice Field delivered the opinion of the Court:[6]

> The Fourteenth Amendment, in declaring that no State "shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses. But neither the amendment--broad and comprehensive as it is--nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and property. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits--for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions.

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[6] Barbier v. Connolly, 113 U. S. 27, 31-32 (1884).

7. In 1894, in Pollock v. Farmers' Loan and Trust Co., the Supreme Court struck down the first income tax law passed by Congress. Justice Field spoke for the Court:[7]

> . . . I could not say less in view of questions of such gravity that go down to the very foundation of the government. If the provisions of the Constitution can be set aside by an act of Congress, where is the course of usurpation to end? The present assault upon capital is but the beginning. It will be but the stepping-stone to others, larger and more sweeping, till our political contests will become a war of the poor against the rich; a war constantly growing in intensity and bitterness. . . .

8. In 1894 a wage cut was the signal for a strike at the Pullman Palace Car Company. The strike soon spread throughout the railroad industry. Federal officials in Chicago appealed to President Cleveland for troops to quiet the disorders. A federal court issued an injunction which commanded strike leader Eugene Debs and others to refrain from interfering with the mails, interstate commerce or work on the railroads. Debs refused and was arraigned for conspiracy in restraint of trade and contempt of court. In October, 1894, Justice David J. Brewer rose in the old Senate chamber to deliver the opinion of the Court on the Debs appeal:[8]

> The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the Nation, and all its militia, are at the service of the Nation to compel obedience to its laws. . . .

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[7] Pollock v. Farmers' Loan and Trust Co., 157 U. S. 429, 607 (1894).

[8] In Re Debs, 158 U. S. 564, 582 (1894).

9. In 1905 an appeal against New York bakery laws prescribing hours and working conditions was heard by the Court. Justice Peckham delivered the majority opinion:[9]

> It must, of course, be conceded that there is a limit to the valid exercise of the police power by the State. There is no dispute concerning this general proposition. Otherwise the Fourteenth Amendment would have no efficacy and the legislatures of the States would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. . . . In every case that comes before this court, therefore, where legislation of this character is concerned and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor. . . .
>
> The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. . . . Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act. . . . Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground. . . .

10. From Justice Holmes's dissenting opinion in *Lochner*:[10]

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[9] *Lochner* v. *New York*, 198 U. S. 45, 56-57 (1904).

[10] *Ibid.*, 75.

> This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious or if you like, as tyrannical as this, and which equally with this interfere with the liberty to contract. . . . The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics . . . . Some . . . laws embody convictions or prejudices which judges are likely to share. Some may not. But a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of _laissez faire_. . . .

11. In 1907, Justice Brewer delivered a Court decision upholding an Oregon law which limited working hours for women in certain types of industries:[11]

> It is undoubtedly true, as more than once declared by this court, that the general right to contract in relation to one's business is part of the liberty of the individual, protected by the Fourteenth Amendment to the Federal Constitution; yet it is equally well settled that this liberty is not absolute and extending to all contracts, and that a State may, without conflicting with the provisions of the Fourteenth Amendment, restrict in many respects the individual's power of contract. . . .

12. In 1922, labor legislation was again before the Court. In this case, the Minimum Wage Board of the District of Columbia sued the Children's Hospital for failure to comply with a women's minimum wage law passed by Congress. Justice Sutherland, speaking for the Court in striking down the minimum wage law:[12]

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[11] _Muller_ v. _Oregon_, 208 U. S. 412, 421 (1907).

[12] _Adkins_ v. _Children's Hospital_, 261 U. S. 525, 545, 560-561 (1922). [Citations omitted.]

> The statute now under consideration is attacked upon the ground that it authorizes an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the Fifth Amendment. That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause, is settled by the decisions of this Court and is no longer open to question. Within this liberty are contracts, generally speaking, the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining. . . .
>
> Finally, it may be said that if, in the interest of the public welfare, the police power may be invoked to justify the fixing of a minimum wage, it may, when the public welfare is thought to require it, be invoked to justify a maximum wage. The power to fix high wages connotes, by like course of reasoning, the power to fix low wages. If, in the face of the guaranties of the Fifth Amendment, this form of legislation shall be legally justified, the field for the operation of the police power will have been widened to a great and dangerous degree. . . . A wrong decision does not end with itself; it is a precedent, and with the swing of sentiment, its bad influence may run from one extremity of the arc to the other. . . .

13. In 1935, the Supreme Court once again struck down a minimum wage law for women. Justice Butler speaking for the Court:[13]

> This court's opinion shows: The right to make contracts about one's affairs is a part of the liberty protected by the due process clause. Within this liberty are provisions of contracts between employer and employee fixing the wages to be paid. In making contracts of employment, generally speaking, the parties have equal right to obtain from each other the best terms they can by private bargaining. Legislative abridgement of that freedom can only be justified by the existence of exceptional circumstances. . . .
>
> The decision and the reasoning upon which it rests clearly show that the State is without power by any form of legislation to prohibit, change or nullify contracts between employers and adult women workers as to the amount of wages to be paid. . . .

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[13] Morehead v. N. Y. Ex Rel. Tipaldo, 298 U. S. 587, 610-611 (1935).

14. Nine months later minimum wage legislation appeared again on the Court docket. Chief Justice Charles Evans Hughes spoke for the majority in West Coast Hotel Co. v. Parrish:[14]

> The principle which must control our decision is not in doubt. The constitutional provision invoked is the due process clause of the Fourteenth Amendment governing the States, as the due process clause invoked in the Adkins case governed Congress. In each case the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract. What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.
> . . .
>
> With full recognition of the earnestness and vigor which characterize the prevailing opinion in the Adkins case, we find it impossible to reconcile that ruling with these well-considered declarations. What can be closer to the public interest than the health of women and their protection from unscrupulous and overreaching employers? And if the protection of women is a legitimate end of the exercise of state power, how can it be said that the requirement of the payment of a minimum wage fairly fixed in order to meet the very necessities of existence is not an admissible means to that end? The legislature of the State was clearly entitled to consider the situation of women in employment, the fact that they are in the class receiving the least pay, that their bargaining power is relatively weak, and that they are the ready victims of those who would take advantage of their necessitous circumstances. The legislature was entitled to adopt measures to reduce the evils of the "sweating system," the exploiting of workers at wages so low as to be insufficient to meet the bare cost of living, thus

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[14] West Coast Hotel Co., v. Parrish, 300 U. S. 379, 391, 398-400. (1936).

> making their very helplessness the occasion of a most injurious competition. The legislature had the right to consider that its minimum wage requirements would be an important aid in carrying out its policy of protection. The adoption of similar requirements by many States evidences a deepseated conviction both as to the presence of the evil and as to the means adapted to check it. Legislative response to that conviction cannot be regarded as arbitrary or capricious, and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment. . . .
>
> Our conclusion is that the case of Adkins v. Children's Hospital, supra, should be, and it is, overruled. The judgment of the Supreme Court of the State of Washington is
>
> Affirmed.

15. Justice Cardozo speaking in the 1937 decision upholding the Social Security Act:[15]

> Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times. . . .

16. In delivering the Court's opinion in Smith v. Allwright, Justice Reed commented:[16]

> In reaching this conclusion we are not unmindful of the desirability of continuity of decision in constitutional questions. However, when convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment and not upon legislative action this Court throughout its history has freely exercised its power to re-examine the basis of its constitutional decisions. This has long been accepted practice, and this practice has continued t this day. . . .

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[15] Helvering v. Davis, 301 U. S. 619, 641 (1937).

[16] Smith v. Allwright, 321 U. S. 649, 665 (1943). [Footnotes omitted.]

17. Justice Frankfurter in a dissenting opinion in 1942:[17]

> In the past this Court has from time to time set its views of policy against that embodied in legislation by finding laws in conflict with what was called the "spirit of the Constitution." Such undefined destructive power was not conferred on this Court by the Constitution. Before a duly enacted law can be judicially nullified, it must be forbidden by some explicit restriction upon political authority in the Constitution. Equally inadmissible is the claim to strike down legislation because to us as individuals it seems opposed to the "plan and purpose" of the Constitution. That is too tempting a basis for finding in one's personal views the purposes of the Founders. . . .

18. World War II required considerable legislation for the effective prosecution of the war. When the constitutionality of one such act of Congress was challenged, Justice Burton delivered the Court opinion:[18]

> One approach to the question of the constitutional power of Congress over the profits on these contracts is to recognize that Congress, in time of war, unquestionably has the fundamental power, previously discussed, to conscript men and to requisition the properties necessary and proper to enable it to raise and support its Armies. Congress furthermore has a primary obligation to bring about whatever production of war equpment and supplies shall be necessary to win a war. . . .

19. In April, 1952, to avert a nation-wide strike of steel workers which he believed would jeopardize national defense during the Korean War, President Truman issued an executive order directing the Secretary of Commerce to seize and operate most of the steel mills. This action was challenged and overturned in the courts. Justice Black spoke for the Supreme Court:[19]

> The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes

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[17] *Board of Education* v. *Barnette*, 319 U. S. 624, 666 (1942).

[18] *Lichter* v. *United States*, 68 S. Ct. 1294, 1307.

[19] *Youngstown* v. *Sawyer*, 343 U. S. 579, 585, 588 (1951).

the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such a power can fairly be implied. . . .

The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress --it directs that a presidential policy be executed in a manner prescribed by the President. . . . The power of Congress to adopt such public policies as those proclaimed by the order is beyond question. It can authorize the taking of private property for public use. It can make laws regulating the relationships between employers and employees, prescribing rules designed to settle labor disputes, and fixing wages and working conditions in certain fields of our economy. The Constitution does not subject this lawmaking power of Congress to presidential or military supervision or control. . . .

SECTION V

PROPOSITION FOURTEEN: A CASE STUDY

The issue relative to property and property rights which seems to evoke the strongest emotional responses is the question of open or integrated housing. Several states now have laws on the books prohibiting discrimination in a wide variety of real estate transactions. Perhaps California's experience with such laws is deserving of special notice, because it raises a great many key issues in the areas of property rights and race relations.

A. California Goes to the Polls

In 1964 Californians voted on the question of open-housing legislation, which involved the people of the state in an emotionally highly-charged issue. Because several states already had or were considering such legislation at the time, California's battle assumed national proportions.

All of the following articles are drawn from *The New York Times* and are arranged in chronological order.

1. June 29, 1958:[1]

> [It is reported that a state court held that in real estate transactions involving the FHA or VA, there could be no racial discrimination.]

2. November 29, 1959:[2]

RIGHTS TO HOUSING WIDENED ON COAST

> [1959 legislation provided that real estate brokers ad salesmen in California may not discriminate and that members of minorities who are denied housing on racial grounds may sue. Privately financed housing is affected by the ruling]

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[1] *The New York Times*, June 29, 1958, 36. ©1958, by The New York Times Co. Reprinted by permission.)

[2] *Ibid.*, Nov. 29, 1959, 34.

3. August 19, 1960:[3]

POITIER SAYS BIAS EXISTS ON COAST

[Nine Negro actors claim that they could not find suitable housing because of racial bias.]

4. May 30, 1961:[4]

[A Negro lawyer and family, claiming that they wished to live in a San Francisco subdivision, "staged a sit-in." The salesmen locked their office when the group appeared and remained inside a near-by house.]

5. March 4, 1962:[5]

[A sit-in occurred in a model home in Monterey Park. The participants claimed that the sellers refused to allow a Negro physician to buy in the development.]

6. July 9, 1962:[6]

[The article describes the efforts of the Congress of Racial Equality to aid Negroes in finding suitable housing in Burbank. Brokers explained that they are caught in the middle between home owners, and Negro buyers. The brokers who showed homes to Negroes were reportedly polite but unable to help the applicants. The experience of one Negro family is described; after a fruitless search they encountered an unpleasant incident of name-calling.]

7. February 15, 1963:[7]

[Governor Edmund Brown asked the Legislature for a fair-housing law; he pointed out that those who must need housing often cannot afford the legel help necessary to find one in much of California.]

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[3] *Ibid*., Aug. 19, 1960, 14.

[4] *Ibid*., May 30, 1961, 6.

[5] *Ibid*., March 4, 1962, 73.

[6] *Ibid*., July 9, 1962, 31. (© 1962, by The New York Times Co. Reprinted by permission.)

[7] *Ibid*., Feb., 15, 1963, 1, 6.

8. April 4, 1963:[8]

[Berkeley rejected an ordinance which would prohibit racial discrimination in the sale or rental of houses. The vote was close.]

9. June 23, 1963:[9]

[After bitter debate, the California legislature passed a bill outlawing racial discrimination in most housing in California. After a month's delay in the Senate the bill was passed despite the efforts of both leaders; it then sped to the assembly and was passed minutes before the deadline. The article describes details of the administration of the bill, penalties, etc.]

10. Headline, July 15, 1963:[10]

LOS ANGELES AREA TO ACCEPT NEGRO

Torrance Tract Residents Say They Won't Panic

11. Headline, July 20, 1963:[11]

CALIFORNIA LAW ON BIAS ASSAILED

Real Estate Men Denounce New Fair Housing Act

12. December 1, 1963:[12]

["Americans to Outlaw Forced Housing" distributed petitions which called for placing on the November ballot an amendment to invalidate the Rumford Housing Act (which prohibits racial discrimination in housing).]

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[8] *Ibid.*, April 4, 1963, 25.

[9] *Ibid.*, June 23, 1963, 58.

[10] *Ibid.*, July 15, 1963, 20.

[11] *Ibid.*, July 20, 1963, 9.

[12] *Ibid.*, Dec., 1, 1963, 58.

13. March 30, 1964:[13]

ANTI-CALIFORNIA BOYCOTT URGED

[Negro comedian Dick Gregory urged that the nation boycott California fruits and wines if the November ballot contains an amendment to invalidate the Rumford Housing Act.]

14. August 17, 1964:[14]

[The article reports the formation of a group of Hollywood personalities to fight the attack on the Rumford Housing Act. Some members are named.]

15. Headline, August 24, 1964:[15]

BISHOPS ON COAST DECRY COLOR BARS

Cardinal McIntyre Heads 8 Church Signatories

16. Headline, September 7, 1964:[16]

FAIR HOUSING LAW ASSAILED ON COAST

California G.O.P. Assembly Backs Repeal Plan

17. November 4, 1964:[17]

[The proposition to nullify much of the anti-bias legislation in California housing was passed with a clear majority.]

18. Headline, November 9, 1964:[18]

COAST VOTE SLAP AT FAIR HOUSING

Trend at Polls Thus Far is Against Anti-bias Laws

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[13] *Ibid*., Mar. 30, 1964, 29.

[14] *Ibid*., Aug. 17, 1964, 13.

[15] *Ibid*., Aug. 24, 1964, 19.

[16] *Ibid*., Sept. 7, 1964, 6.

[17] *Ibid*., No. 4, 1964, 34.

[18] *Ibid*., Nov. 9, 1964, 1.

19. Headline, November 11, 1964:[19]

PRESIDENT OF REALTORS PUTS PROPERTY RIGHTS FIRST

Calls Them More Basic Than Civil Rights of Minorities

20. January 4, 1965:[20]

[The article reports the case of Mrs. Carola Prendergast who rented an apartment while waiting for her husband to join her from another city. Shortly after he arrived she was served an eviction notice. The American Civil Liberties Union claimed that the landlord intended to evict the couple because Mr. Prendergast is a Negro and his wife, white. The state issued a preliminary injunction to halt the eviction at Mrs. Prendergast's request and the case stands as a test of the new California ruling on bias in housing.]

21. May 27, 1965:[21]

HOUSING BIAS RULE TO GET COAST TEST

[It is reported that the California Supreme Court agreed to hear a dispute concerning the constitutionality of the proposition which rendered the Rumford Housing Act ineffective.]

22. May 11, 1966:[22]

[The California Supreme Court held invalid the amendment to the State Constitution which effectively permitted bias in housing.]

23. September 16, 1966:[23]

[An elderly woman is reported as complaining that Governor Brown let "the Negroes" come right in next to her "nice home."]

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[19] *Ibid.*, Nov. 11, 1964, 30.

[20] *Ibid.*, Jan. 4, 1965, 19.

[21] *Ibid.*, May 27, 1965, 14.

[22] *Ibid.*, May 11, 1966, 1, 27.

[23] *Ibid.*, Sept. 16, 1966, 27.

24. September 28, 1966:[24]

[The writer claims that the issue of open housing is a vital one in the gubernatorial campaign. Reagan is identified with critics of open housing legislation and even though he does not discuss this issue often, he is strongly supported by the "white backlash" for his stand. Reagan has softened his earlier stand somewhat by calling for a committee to study the problem and make recommendations to the legislature.]

25. March 21, 1967:[25]

HIGH COURT HEARS FAIR HOUSING TEST

California Lawyer Attacks State's Discrimination Ban

[The Californian protests that if the Supreme Court upholds the decision of the California court, that is, the prohibiting of the repeal of anti-bias legislation, then other states could pass similar housing laws which they could not later repeal.]

26. March 22, 1967:[26]

[Thurgood Marshall as friend of the court stated that California voters could not constitutionally repeal an act aimed at preventing racial discrimination in housing. The proposition would hinder local efforts to ease racial tensions he explained. Marshall observed that minority groups lack the support and financial capability to get legislation passed for their benefit.]

B. California Goes to the Supreme Court

The Supreme Court ruled on the constitutionality of Proposition 14 in the case of *Reitman* v. *Mulkey*. From the Court's decision:[27]

> Petitioners contend that the California court has misconstrued the Fourteenth Amendment since the repeal of any statute prohibiting racial discrimination, which

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[24] *Ibid.*, Sept. 28, 1966, 28.

[25] *Ibid.*, March 21, 1967, 20.

[26] *Ibid.*, March 22, 1967, 22.

[27] *Reitman* v. *Mulkey*, 87 S. Ct. 1627, 1631-1632, 1634-1641 (1967). [Footnotes and citations omitted.]

is constitutionally permissible, may be said to "authorize" and "encourage" discrimination because it makes legally permissible that which was formerly proscribed. But as we understand the California court, it did not posit a constitutional violation on the mere repeal of the Unruh and Rumford Acts. It did not read either our cases or the Fourteenth Amendment as establishing an automatic constitutional barrier to the repeal of an existing law prohibiting racial discriminations in housing; nor did the court rule that a State may never put in statutory form an existing policy of neutrality with respect to private discriminations. What the court below did was first to reject the notion that the State was required to have a statute prohibiting racial discriminations in housing. Second, it held the purpose and intent 26 [of Proposition 14] was to authorize private racial discriminations in the housing market, to repeal the Unruh and Rumford Acts and to create a constitutional right to discriminate on racial grounds in the sale and leasing of real property. Hence, the court dealt with 26 as though it expressly authorized and constitutionalized the private right to discriminate. Third, the court assessed the ultimate impact of 26 in the California environment and concluded that the section would encourage and significantly involve the State in private racial discrimination contrary to the Fourteenth Amendment.

The California court could very reasonably conclude that 26 would and did have wider impact than a mere repeal of existing statutes. . . . Private discriminations in housing were now not only free from Rumford and Unruh but they also enjoyed a far different status than was true before the passage of those statutes. The right to discriminate on racial grounds, was now embodied in the State's basic charter, immune from legislative, executive, or judicial regulation at any level of the state government. Those practicing racial discriminations need no longer rely solely on their personal choice. They could now invoke express constitutional authority, free from censure or interference of any kind from official sources. All individuals, partnerships, corporations and other legal entities, as well as their agents and representatives, could now discriminate with respect to their residential real property, which is defined as any interest in real property of any kind or quality, "irrespective of how obtained or financed," and seemingly irrespective of the relationship of the State to such interests in real property. Only the State is excluded with respect to property owned by it. . . .

Section 26 was intended to authorize, and does authorize, racial discrimination in the housing market. The right to discriminate is now one of the basic policies of the State. The California Supreme Court believes that the section will significantly encourage and involve the State in private discriminations. We have been presented with no persuasive considerations indicating that this judgment should be overturned.

[Decision of the California Supreme Court] Affirmed.

Mr. Justice DOUGLAS, concurring.

While I join the opinion of the Court, I add a word to indicate the dimensions of our problem.

This is not a case as simple as the one where a man with a bicycle or a car or a stock certificate or even a log cabin asserts the right to sell it to whomsoever he pleases, excluding all other whether they be Negro, Chinese, Japanese, Russians, Catholics, Baptists, or those with blue eyes. We deal here with a problem in the realm of zoning, similar to the one we had in Shelley v. Kraemer, where we struck down restrictive covenants.

Those covenants are one device whereby a neighborhood is kept "white" or "Caucasian" as in the dominant interests desire. Proposition 14 in the setting of our modern housing problem is only another device of the same character. . . .

Proposition 14 is a form of sophisticated discrimination whereby the people of California harness the energies of private groups to do indirectly what they cannot under our decisions allow their government to do. . . .

Under California law no person may "engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this State without first obtaining a real estate license. These licenses are designated to serve the public. Their licenses are not restricted, and could not be restricted, to effectuate a policy of segregation. That would be state action that is barred by the Fourteenth Amendment. There is no difference, as I see it, between a State authorizing a license to practice racial discrimination and a State, without any express authorization of that kind nevertheless launching and countenancing the operation of a licensing system in an environment where the whole weight of the system is on the side of discrimination. . . .

Since the real estate brokerage business is one that can be and is state regulated and since it is state licensed, it must be dedicated, like the telephone companies and the carriers and the hotels and motels to the requirements of service to all without discrimination--a standard that in its modern setting is conditioned by the demands of the Equal Protection Clause of the Fourteenth Amendment. . . .

Mr. Justice HARLAN, whom Mr. Justice BLACK, Mr. Justice CLARK, and Mr. Justice STEWART join, dissenting.

I consider that this decision, which cuts deeply into state political processes, is supported neither by anything "found" by the Supreme Court of California nor by any of our past cases decided under the Fourteenth Amendment. In my view today's holding, salutary as its result may appear at first blush, may in the long run actually serve to handicap progress in the extremely difficult field of racial concerns. I must respectfully dissent. . . .

I am wholly at loss to understand how this straightforward effectuation of a change in the California constitution can be deemed a violation of the Fourteenth Amendment, thus rendering 26 void and petitioners' refusal to rent their property to respondents, because of their race, illegal under prior state law. The Equal Protection Clause of the Fourteenth Amendment, which forbids a State to use its authority to foster discrimination based on such factors as race, does not undertake to control purely personal prejudices and predilections, and individuals acting on their own are left free to discriminate on racial grounds if they are so minded. By the same token, the Fourteenth Amendment does not require of States the passage of laws preventing such private discrimination, although it does not of course disable them from enacting such legislation if they wish.

In the case at hand California, acting through the initiative and referendum, has decided to remain "neutral" in the realm of private discrimination affecting the sale or rental of private residential property; in such transactions private owners are now free to act in a discriminatory manner previously forbidden to them. In short, all that has happened is that California has effected a pro tanto repeal of its prior statutes forbidding private discrimination. This runs no more afoul of the Fourteenth Amendment than would have California's failure to pass any such antidiscrimination statutes in the first instance. The fact that such repeal was also accompanied by a constitutional prohibition against future enactment of such laws by the California Legislature cannot well be thought to affect, from a federal constitutional standpoint, the validity of what California has done. The Fourteenth Amendment does not reach such state constitutional action any more than it does a simple legislative repeal of legislation forbidding private discrimination. . . .

The Court attempts to fit 26 within the coverage of the Equal Protection Clause by characterizing it as in effect an affirmative call to residents of California to discriminate. The main difficulty with this viewpoint is that it depends upon a characterization of 26 that cannot fairly be made. The provision is neutral on its face, and it is only by in effect asserting that this requirement of passive official neutrality is camouflage that the Court is able to reach its conclusion. In depicting the provision as tantamount to active state encouragement of discrimination the Court essentially relies on the fact that the California Supreme Court so concluded. It is said that the findings of the highest court of California as to the meaning and impact of the enactment are entitled to great weight. I agree, of course, that findings of fact by a state court should be given great weight, but this familiar proposition hardly aids the Court's holding in this case. . . .

Moreover, the grounds which prompt legislators or state voters to repeal a law do not determine its constitutional validity. That question is decided by what the law does, not by what those who voted for it wanted it to do, and it must not be forgotten that the Fourteenth Amendment does not compel a State to put or keep any particular law about race on its books. The Amendment forbids only a State to pass or keep in effect laws discriminating on account of race. California has not done this. . . .

Section 26 is by its terms inoffensive, and its provisions require no affirmative governmental enforcement of any sort. A third category of equal protection cases, conceededly more difficult to characterize, stands for the proposition that when governmental involvement in private discrimination reaches a level at which the State can be held responsible for the specific act of private discrimination, the strictures of the Fourteenth Amendment come into play. In dealing with this class of cases, the inquiry has been framed as whether the State has become "a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." . . .

The core of the Court's opinion is that 26 is offensive to the Fourteenth Amendment because it effectively encourages private discrimination. By focussing on "encouragement" the Court, I fear, is forging a slippery and unfortunate criterion by which to measure the constitutionality of a statute simply permissive in purpose and effect, and inoffensive on its face. . . .

A moment of thought will reveal the far-reaching possibilities of the Court's new doctrine, which I am sure the Court does not intend. Every act of private discrimination is either forbidden by state law or permitted by it. There can be little doubt that such permissiveness--whether by express constitutional of statutory provision, or implicit in the common law--to some extent "encourages" those who wish to discriminate to do so. Under this theory "state action" in the form of laws that do nothing more than passively permit private discrimination could be said to tinge all private discrimination with the taint of unconstitutional state encouragement.

This type of alleged state involvement, simply envincing a refusal to involve itself at all, is of course very different from that illustrated in . . . cases . . . where the Court found active involvement of state agencies and officials in specific acts of discrimination. It is also quite different from cases in which a state enactment could be said to have the obvious purpose of fostering discrimination. I believe the state action required to bring the Fourteenth Amendment into operation must be affirmative and purposeful, actively fostering discrimination. Only in such a case is ostensibly "private" action more properly labeled "official." I do not believe that the mere enactment of 26, on the showing made here, falls within this class of cases.

I think that this decision is not only constitutionally unsound, but in its practical potentialities short-sighted. Oponents of state antidiscrimination statutes are now in a position to argue that such legislation should be defeated because, if enacted, it may be unrepealable. More fundamentally, the doctrine underlying this decision may hamper, if not preclude, attempts to deal with the delicate and troublesome problems of race relations through the legislative process. The lines that have been and must be drawn in this area, fraught as it is with human sensibilities and frailties of whatever race or creed, are difficult ones. The drawing of them requires understanding, patience, and compromise, and is best done by legislatures rather than by courts. When legislation in this field is unsuccessful there should be wide opportunities for legislative amendment, as well as for change through such processes as the popular initiative and referendum. This decision, I fear, may inhibit such flexibility. Here the electorate itself overwhelmingly wished to overrule and check its own legislature on a matter left open by the Federal Constitution. By refusing to accept the decision of the people of California, and by contriving a new and ill-defined constitutional concept to allow federal judicial interference, I think the Court has taken to itself powers and responsibilities left elsewhere by the Constitution.

I believe the Supreme Court of California misapplied the Fourteenth Amendment, and would reverse its judgment, and remand the case for further appropriate proceedings.

SECTION VI

THE SOCIAL BALANCE

Concepts of rights often seem to present questions of great concern in every society. Sometimes feelings become so aroused that violence results. Perhaps the issue is of special significance for us because of the ever-changing character of our society. We face problems today that were totally unthought of a generation ago.

New problems pose particularly difficult questions in the area of rights. Must we now accept laws that keep us from having sole discretion in matters concerning the use, rental, or sale of our property? Will governments be justified in forcing us to use electric-powered automobiles instead of gasoline vehicles or in requiring that we carry four passengers in order to drive a car into major cities? Does a man have the right to cut down redwood trees in his own land? These and similar questions are assuming major proportions today.

1. Real Estate developer William J. Levitt testified on Title IV of the Civil Rights Act:[1]

> Mr. Levitt. Mr. Chairman and members of the subcommittee, my statement is directed to title IV of the 1966 civil rights bill which proposes, throughout the United States, to outlaw discrimination in housing based on race.
>
> There are important questions of public policy involved here as well as moral issues of right and wrong. I won't dwell on these. I am here to give facts--to tell you what has happened to us--because we must also consider the practical effects of such momentous legislation. . . .
>
> I believe, and I can prove, insofar as any future eventuality can be proved, that title IV, if enacted, would work and work well. I also believe, and I can prove, that title

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[1] House of Representatives, 89th Cong., 2nd Sess., Civil Rights (Government Printing Office, Washington, 1966), 1532-1537.

IV is likely to have absolutely no impact whatever on the economics of the homebuilding industry. . . .

In 1960, for the first time, we were building in an area where there was an antidiscrimination law on the books--the State of New Jersey. In the course of that year our total business amounted to something over $15 million.

Since that time we have branched out. We are building at more than a dozen locations in four Eastern States, in Puerto Rico and in France. . . .

Our sales volume for the fiscal year just completed came to some $74 million. That's fivefold increase in the 5 years since we began to sell on an open occupancy basis.

Just to keep things in the right perspective, I want to point out that this growth is not in any way attributable to boom conditions in the homebuilding industry. In 1959 there was 1.5 million housing starts. Last year it was just about the same. In between there were ups and downs--as low as a million and a quarter and as high as 1.6 million.

Obviously integration has certainly not hurt us and that's why it's logical to believe there's absolutely no reason for anyone to fear the economic impact of title IV on the homebuilding industry. . . .

To this date I don't know of a single racial disturbance in any open occupancy community we have ever built. There have been no outbreaks, no violence, no picketing, no commotion of any kind. No one ever even said, "Boo."

Quite the contrary. All children go to the same schools All residents share the same community swimming pools. They participate in the same community life; and those who have leadership qualities get elected to public office. I can cite three such instances, and there may be others. One is on a town committee; another, on a local school board; and the third, on a planning board.

The really amazing thing, after all the years of fear and hesitation about integrating housing, is that when integration does take place, nothing bad happens--absolutely nothing. No one fusses. Everyone goes on about his normal business. No one really seems to care--after the fact. . . .

The barriers to equal opportunity which have denied to Negroes a fair share of their birthright as Americans are crumbling everywhere--in education, in jobs, in politics, and in housing, too.

It is high time we recognize what is already taking place and write a new set of ground rules in respect to housing which reflects these altered circumstances.

It is not only compassion for the Negro and our sense of justice that must guide us; it is plain commonsense as well. The strains and tensions of the continuing civil rights conflict are dividing this Nation. . . .

The Chairman. I take it then a fair housing bill and open occupancy would not hurt the sale of the houses you build? . . .

Mr. Levitt. Well, we started to build after Levitttown, N.J.--in northern New Jersey in a place called Matawan. We built some 1,900 houses there; they were all sold ahead of schedule, and we have--I don't know by all count--but we have some 10, 12, or 15 Negro families of which 1, incidentally, is on the town committee. It not only did not slow down sales--

The Chairman. All those are cases where there was general information that there was open housing, no discrimination, and your sales were not affected?

Mr. Levitt. Correct. The State of New Jersey, as you know, Mr. Chairman, has an antidiscrimination law. The State of New York also has such a law, and we are building currently out in Long Island, where we have several Negroes in residence. We obviously operate on an open-occupancy basis. We have no problem there. We are roughly sold out a year in advance.

The Chairman. What about Willingboro, N. J.?

Mr. Levitt. Willingboro is what used to be known as Levitttown, N.J. That is the same thing.

It is a large community, has some 6,000 houses in it now. There are currently about 200 Negro families. We sold about 100; another hundred purchased resales. All I can tell you is that today you cannot purchase a house in Willingboro, N.J., for the sale price we sold it for several years ago. Prices have gone up. . . .

The Chairman. There is no trouble in the resale?

Mr. Levitt. None whatsoever.

Mr. Chairman. Despite the fact Negroes have occupied these houses?

Mr. Levitt. Correct. . . .

Mr. McCulloch. Could you give us the average cost of your housing in the United States in the States where there has been open housing?

Mr. Levitt. We run from approximately $14,000 low in one community to approximately $32,000 high in another community.

Mr. McCulloch. And the answer that you gave to the chairman, that you found no difficulty in reselling or the owners found no difficulty in reselling property that had been occupied by Negroes, would be as true for the $14,000 level as for the $32,000-odd?

Mr. Levitt. That, Mr. McCulloch, is the community in which we have the greatest amount of Negroes, which would be in Willingboro, N. J. That is our lowest price. . . .

Mr. McCulloch. Have you reached a conclusion why so few Negroes have decided to seek housing in your projects?

Mr. Levitt. I think two reasons; I think No. 1, of course, the Negro has not reached the economic level of his counterpart of the white man, which is as Mr. Young said a few moments ago. I think we have a long way to go on education and employment practices, so that the Negro gets to where he is on the level with the white man.

As a result, among a given amount of Negro prospects and the same amount of white prospects, there are many, many more white prospects that are eligible salarywise, economic-wise to purchase housing from us and others than the Negro.

You take Philadelphia, from which we could draw a great many potential Negro customers for our south Jersey community. There are not enough of them that are economically qualified to purchase, and that, of course, is the principal reason. There is another reason which is much less valid, but I think to a certain degree has to be taken into consideration.

I think that all minority groups, of which I happen to be a member of one, are clannish, very clannish. I think they like to stick together. I know of communities, for instance, that when Jewish people went in, they became almost 100 per cent Jewish over a period of years, and I think the Negro might be a little bit timid in going into a community where he knows it will be overwhelmingly white.

More and more, however, that is being broken down. That is not as valid an argument as the economic one.

Mr. McCulloch. But you think the psychological reaction is at least somewhat of a barrier?

Mr. Levitt. It is somewhat of a barrier.

Mr. McCulloch. You think it will be broken down as educational opportunities present themselves and are taken advantage of?

Mr. Levitt. I do not think there is the slightest doubt. Not the slightest doubt. . . .

2. The economist John Kenneth Galbraith commented on the balance between private and public sectors of our society:[2]

> [Galbraith recounts ills of the post-World War II city in education, recreation, etc. He discusses the values of a society which pollutes its air and water and violates its countryside. He recommends in addition to better services, an evaluation of priorities in our culture.]

3. Social critic Vance Packard stated:[3]

> [Packard points out that the steps taken to relieve the congestion of cities may in fact cause further congestion. Cars need highways but more highways encourage more cars. He notes the passing of clean rivers, privacy, and pure air.]

4. About redwood trees, Vance Packard stated:[4]

> [Packard describes the beauty of the redwood and laments the current destruction of this natural resource for patio tables and shingles.]

5. _Time_ magazine on the redwood question:[5]

> [The article documents the destruction of the redwood, and outlines efforts to save the trees; the writer favors the practical plan of the Save-the-Redwoods League.]

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[2] John Kenneth Galbraith, _The Affluent Society_ (Houghton-Mifflin Co., Boston, 1958), 252-253, 256.

[3] Vance Packard, _The Wastemakers_ (David McKay Co., Inc., New York, 1960), 189-190, 192-193.

[4] Vance Packard, "Life and Death of A Primeval Empire," _American Heritage_ XVIII (February, 1967), 112.

[5] _Time_, Mar. 24, 1967, 20-21. (Courtesy TIME; Copyright Time Inc., 1967.)

6. An article from The New York Times describing a fishing problem in Montana:[6]

> [During a copper strike, wastes were pumped into the Clark Fork, polluting the river and killing the fish. The union refused to allow some of its men to work in the factories on the equipment which would divert these wastes.]

7. The air we breathe:[7]

> [Although there is general agreement that pollution of the air is undesirable, there is no clear answer to the problem of who should be responsible for drawing up rules, and enforcing them. Standards vary and industries often exert pressure on concerned groups.]

8. Cars and air:[8]

> [The writer describes the harm done by air pollution in California. He praises the work of the county agency but explains that this group has no authority over the greatest source of pollution, automobiles.]

9. Vance Packard on advertising:[9]

> [Packard describes the proliferation of bill-boards, posters, etc., that clutter urban and rural environments. He gives some bizarre examples.]

10. A Life magazine editorial:[10]

> [The article begins with a sardonic fantasy about societies for the preservation of "virgin" billboards in face of the all-powerful Highway Beautification Act of 1965. The writer laments that the act was emasculated and he recommends new legislation.]

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[6] The New York Times, August 12, 1967, 80. (©1967, by The New York Times Co. Reprinted by permission.)

[7] Time, February 10, 1967, 18.

[8] Philip Hager, "California's Still Choking," The New Republic, February 11, 1967, 10-11. (Reprinted by Permission of THE NEW REPUBLIC, C 1967, Harrison-Blaine of New Jersey, Inc.)

[9] Vance Packard, The Wastemakers, 222-223.

[10] "How About a Billboards National Park?," Life, May 19, 1967, 4.

SUGGESTIONS FOR ADDITIONAL READING

An excellent survey of American intellectual history is Ralph Henry Gabriel's *The Course of American Democratic Thought* (The Ronald Press, New York, 1956), while *Democracy, Liberty, and Property: Readings in the American Political Tradition* edited by Francis W. Coker (The Macmillan Co., New York, 1947) provides an excellent source book on rights.

For the defense of traditional views of property, *Constitution of Liberty* by F. A. von Hayek (University of Chicago Press, Chicago, 1960), *On Freedom and Free Enterprise* (Van Nostrand, New York, 1957) edited by Mary H. Sennholz, and *In Defense of Property by* Gottfried Dietze (Regnery, New York, 1964) are quite useful.

Three recent books dealing with aspects of housing are *Freedom Now! The Civil Rights Struggle in America* (Basic Books, New York, 1964), edited by Alan Westin, *To Be Equal* (McGraw-Hill, New York, 1964) by Whitney Young and especially *Property Values and Race: Studies in Seven Cities; Special Report to the Commission on Race and Housing* (University of California Press, Berkeley, 1960) by Luigi Laurenti.

In Courts and Rights; The American Judiciary in Action (Random House, New York, 1966) John P. Roche examines the nature of natural and positive law in America's judicial system. In *Individual Freedom and Governmental Restraints* (Louisiana State University Press, 1956) Walter Gellhorn examines the shift of judicial responsibilities in the area of rights to administrative agencies, while in *Equality by Statue; Legal Controls Over Group Discrimination* (Columbia University Press, New York, 1952) Morroe Berger explores attempts to legislate against discrimination.

For books that consider the social balance, read Donald Meiklejohn's *Freedom and the Public*; *Public and Private Morality in America* (Syracuse University Press, Syracuse, 1965), Vance Packard's *The Wastemakers* (David McKay Co., New York, 1960), and John Kenneth Galbraith's *The Affluent Society* (Houghton-Mifflin Co., Boston, 1958).